court had subject matter jurisdiction over the case in light of its continuing jurisdiction over the Class Settlement as well as the All Writs Act, 28 U.S.C. § 1651. App. 15a-17a. The court also held that Lester had received a copy of LP's motion, which was adequate for purposes of service, and that the question of minimum contacts for Due Process purposes was intertwined with the question on the merits regarding the propriety of the injunction, so did not need to be resolved in light of the court's disposition of the case on the merits. App. 15a n.12.

The court then held that the injunction entered in this case was improper under the Anti-Injunction Act because this case did not fit within any of the Act's exceptions. App. 18a-38a. (Having reached that conclusion, the court did not resolve any of Lesters' other arguments on appeal. App. 18a n.15.)

The court held, first, that the "in aid of jurisdiction" exception to the Anti-Injunction Act did not apply in this case. Even though LP had not yet decided at the time of the injunction whether it would make a "final funding" of the settlement fund, see App. 25a n.23, 52a, the court held that "the Inner-Seal Siding class action had long since been resolved," because "the district court had several years earlier approved the settlement and entered final judgment." App. 22a. In the court's view, this meant that "the litigation was over," so "the state court action could not have interfered with the district court's consideration or disposition of the class claims," and the "in aid of jurisdiction" exception did not apply. *Id.*

The court then found that the injunction could not be justified under the "protect or effectuate [the district court's] judgment" exception to the Anti-Injunction Act. The court believed that the exception applied *solely* to instances in which concepts of res judicata and collateral estoppel would apply to bar the state proceeding. App. 28a. Because Lester had not been a party to the Class Settlement, the majority

concluded, res judicata would not bind Lester, and so this exception did not permit entry of the injunction. App. 28a-31a. If Minnesota state courts believed that Lester had an "entirely personal" claim for damages, the majority held, that damage award could not be limited by the district court, even if that award existed solely because of claims that had been previously settled by the Class Settlement. App. 31a-32a; compare App. 56a.[2]

b. Judge Reinhardt dissented. App. 44a-69a. In his view, the majority opinion drew an improperly strict distinction between the two exceptions at issue. As an initial matter, he noted that "[t]there is no question that the Minnesota state court verdict involved the relitigation of issues that had been resolved by the settlement agreement." App. 50a. Regardless of how Minnesota law characterized Lester's award of these damages, and regardless of the "inconsequential" question of whether Minnesota courts would view these damages as recoverable in light of the Class Settlement, App. 52a, "the jury's verdict conflicts directly with the settlement agreement and federal court order, and it may properly be enjoined." App. 51a. In the dissent's view, even if this particular claim for this particular legal damage theory had not been previously litigated, the *issue* had been fully re-

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[2] Judge Silverman concurred, finding that LP's decision to argue at all in state court about the applicability of the Class Settlement amounted to an election of remedy. In his view, LP was barred from bringing the federal court motion at all. App. 38a-43a. Neither Judge Clifton, however, nor Judge Reinhardt, in dissent, agreed with that position. See App. 55a n.3 (Reinhardt, J., dissenting).

In any event, as LP pointed out in the court of appeals, LP was unaware of Lester's plans to flaunt the Class Settlement and to seek repair costs for the very buildings covered by the settlement until an expert report that issued in June, 2002, two months before trial. Once Lesters' strategy became clear, LP appropriately balanced an effort to easily clarify this issue in the Minnesota courts with a prompt reference to federal court upon the first clear indication that the Class Settlement would be threatened.

solved in the settlement. App. 53a. In that circumstance, the dissent pointed out, an injunction was proper.

With respect to the "in aid of jurisdiction" exception, the dissent noted that the trial court had made factual findings regarding the effect of the Minnesota verdict on its jurisdiction. In the dissent's view, the majority failed to give proper deference to those findings. App. 48a-49a. In addition, however, the dissent pointed out that in light of the district court's clear jurisdiction over the implementation of the class settlement – an authority recognized even by the majority when it concluded that the district court had jurisdiction over this proceeding, see App. 16a-17a – the injunction itself was also "necessary in aid of [the district court's] jurisdiction." See App. 65a-66a.

That was particularly true, the dissent concluded, in light of the extensive negotiation that produced this particularly complex Class Settlement. App. 66a-67a. In essence, the dissent found (as other circuits have) that the complexity of this Class Settlement created a *res* overseen by the district court's continuing jurisdiction. See App. 67a (citing *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989)) (making similar analogy and permitting entry of injunction under Anti-Injunction Act). Management of a *res* within the district court's jurisdiction, the dissent believed, fell within the scope of the "in aid of jurisdiction" exception to the Act.

In conclusion, the dissent found, "the majority condones a double recovery by a subgroup of class members in direct contravention of the settlement agreement and encourages the proliferation of similar subgroups and similar lawsuits in other states." App. 44a. In addition,

> [a]t a time when Congress is expanding the jurisdiction of the federal courts over national class-action lawsuits, *see* 28 U.S.C. § 1332(d), the majority's decision severely limits the authority of district courts to protect that jurisdiction and to preserve

> the settlement agreements they have authorized. It renders federal court orders and judgments vulnerable to further litigation in state courts on a state-by-state basis, litigation that can reopen what are intended to be final damage awards and undermine the orderly implementation of complex national settlement agreements.

App. 44a.

REASONS FOR GRANTING THE PETITION

The court of appeals' opinion conflicts with the decisions of other United States Courts of Appeals, including the decisions of the Second, Third, and Eleventh Circuits, on an issue of national importance. Sup. Ct. R. 10(a). Compare *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985); *U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* ["IBT"], 907 F.2d 277 (2d Cir. 1990; *In re Diet Drugs*, 282 F.3d 220 (3rd Cir. 2002); *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989); see also *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196 (7th Cir. 1996).

In case after case, this Court and the federal courts of appeals have recommended the precise steps that LP took in this case to protect its interests in the benefits of the settlement. See, e.g., *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 34 n. * (2002) (suggesting that party seeking to protect against state court proceeding that would conflict with already-entered settlement should seek injunction in court that approved settlement). The court of appeals' decision runs contrary to those decisions, and by doing so it "severely limit[s]" the ability of the federal courts to secure and enforce settlements in complex class matters. App. 44a.

The question of district court authority over class settlements is important because nationwide class settlements of the sort that generate the legal question presented in this case are, as a general matter, extremely complex and carefully-

negotiated among many parties for high stakes. Such negotiations can be efficient only if the district court's continuing authority over these settlements and potentially conflicting actions is known and can be relied upon by the parties.

The decision below generates substantial uncertainties for parties entering into these settlements. Only this Court can resolve those uncertainties, and the need to do so is particularly important and urgent given last year's enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (Feb. 18, 2005), which will substantially increase the number and scope of complex federal class action proceedings.

A. The Decision Below Conflicts with Other Circuit Courts' Interpretations of the Plain Language of the Anti-Injunction Act.

The Anti-Injunction Act permits a district court to issue an injunction "in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. In this case, the district court concluded that the jury verdict in Minnesota, if allowed to stand in full, would prevent LP from receiving the benefit of its bargain in the negotiated and court-approved federal class settlement, under which class members agreed to release all repair claims that they might have against LP and all builders and others in the chain of distribution of LP siding. Whether Lester's recovery is permitted under Minnesota law or not, the district court properly concluded that if one of those builders and distributors could recover for the *same damage* that had been released by the class settlement, it would "circumvent" and "seriously impair" the class settlement and "directly interfere with" the district court's ability "to supervise, implement, enforce, construe and interpret the class action settlement agreement over which [it] retained exclusive jurisdiction." App. 88a. An injunction in these circumstances complies with the plain language of the Anti-Injunction Act.

The court below, however, in a divided opinion, concluded that even in the presence of such findings, the Anti-Injunction Act allows injunctions of state court proceedings *only* if (1) no settlement has been executed, or (2) if a settlement has been executed, the party threatening that settlement was bound, on r*es judicata* principles, by the initial federal litigation.

No such distinction has ever been drawn in prior cases addressing similar injunctions. Rather, circuit after circuit has, in similar cases, permitted federal court injunctions of state proceedings in order to protect federal jurisdiction over class settlements.[3] That has been true for *completed* settlements, and it has been true even if the subsequent action is brought by third parties not otherwise bound by the earlier settlement. Contrary to the court of appeals' position in this case, the case law emphasizes that if the settlement is threatened, an injunction can issue.

The decision below, therefore, conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue, including most prominently *Baldwin-United*, 770 F.2d at 328 (2d Cir.); *IBT*, 907 F.2d at

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[3] In addition to the cases cited below, other federal courts have regularly approved of the use of injunctions against state court proceedings in order to protect class action settlements. See, e.g., *In re Agent Orange Prod. Liab. Litigation*, 996 F.2d 1425, 1431-32 (2d Cir. 1993) (finding removal from state court of litigation that might have a "deleterious effect on [a preexisting federal class] settlement mechanism" to be appropriate exercise of district court's authority under Anti-Injunction Act "in aid of its jurisdiction" clause) (the *Agent Orange* All Writs Act holding has arguably been abrogated by *Syngenta*, see App. 23a n.21, but the Anti-Injunction Act holding of that case remains good law); *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1203 (7th Cir. 1996) (Anti-Injunction Act "does not bar courts with jurisdiction over complex multidistrict litigation from issuing injunctions to protect the integrity of their rulings," including pre-trial rulings like discovery orders (which were at issue in that case)).

277 (2d Cir.); *Diet Drugs*, 282 F.3d at 220 (3rd Cir.); and *Battle*, 877 F.2d at 877 (11th Cir.).

1. The dissent in this case explicitly notes that the panel decision "create[s] a direct conflict with" *Baldwin-United*. App. 58a. In *Baldwin-United*, the Second Circuit properly recognized that third parties may be enjoined under the All Writs Act from interfering with settlements in federal cases. There, the Second Circuit approved a district court's injunction prohibiting state attorneys general from filing suit in order to represent the interests of the same consumers who were class members in a case that was nearing settlement before the district court. The Second Circuit recognized that while the class members themselves did not threaten to bring these additional suits, if parties "could derivatively assert the same claims on behalf of [class members] there could be no certaint[y] about the finality of any federal settlement." 770 F.2d at 337.

The derivative claims that the Second Circuit saw as threatening the district court's jurisdiction are the same kind of claims that the district court enjoined in this case. While the decision below argues that under Minnesota law these claims are claims of *Lester*'s and not claims of the class members, App. 31a, the claims enjoined in *Baldwin-United* also were not direct claims of the class members; the injunction in that case extended to claims seeking money damages of any kind as long as they were "arising out of" the facts presented in the district court litigation. See *id.* at 334.

The court of appeals' decision fundamentally conflicts with the decision in *Baldwin-United*. The opinion below suggests that *Baldwin-United* was distinguishable because it did not involve the Anti-Injunction Act (there were no state proceedings yet), and because it involved a settlement that was not yet complete. App. 30a n.26. Neither distinction matters, however. First, the Second Circuit explicitly relies on Anti-Injunction Act cases in analyzing the identical language of the All Writs Act, and it recognizes, as have

other courts, that these statutes need to be interpreted consistnently. 770 F.2d at 335-36; see also *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 197 (3rd Cir. 1993) (holding that the provisions are applied similarly); Historical Notes to 28 U.S.C. § 2283 (noting that the "in aid of its jurisdiction" language was added to Anti-Injunction Act in order to "conform to the language of" All Writs Act). In fact, even the court below recognized that the district court had authority under the All Writs Act here; it viewed that Act as the source of the district court's authority to consider LP's motion for an injunction in light of its ongoing jurisdiction over the Class Settlement. App. 16a-17a. There is no explanation, in light of that holding, for the court of appeals' failure to carry that same conclusion over to the Anti-Injunction Act; the presence of a final settlement in this case does not amount to an explanation.

Second, contrary to the decision below, the lack of a "final" settlement in *Baldwin-United* was not relevant to the Second Circuit's decision in that case. There, as here, the primary point of the injunction was that "there could be *no certainty* about the finality of *any* federal settlement" without the ability to enjoin the kind of derivative claims that Lester brought in this case. See 770 F.2d at 337 (emphasis added). Indeed, the Second Circuit emphasized in *Baldwin-United* that the authority to issue the injunction under the All Writs Act was clearer for the subclasses that *had* settled, and *more difficult* as to the subclasses that had not. *Id.* at 338.

The technical status of the class settlement was irrelevant to the Second Circuit, just as it should have been to the Ninth Circuit in this case. The Ninth Circuit's holding that the "in aid of" exception did not apply here because the Class Settlement was final conflicts with *Baldwin-United*, which would allow it to apply in this case. This Court should resolve the conflict.

2. For the same reason, the decision below also conflicts with the Eleventh Circuit, which has explicitly held that the

entry of a final judgment *does not* bar a district court from enjoining state court action under the "in aid of jurisdiction" exception of the Anti-Injunction Act. *Battle*, 877 F.2d at 881. In *Battle*, the Eleventh Circuit upheld an injunction issued by the district court against a state court proceeding that, in the district court's view, would have interfered with its continuing jurisdiction over the construction and implementation of a final class settlement of an antitrust complaint brought against funeral homes and insurance companies by a class of insured individuals. The class members who brought the enjoined subsequent state court proceeding argued that the "in aid of its jurisdiction" exception to the Anti-Injunction Act did not apply because a final judgment had already been entered in federal court. In applying the "in aid of jurisdiction" exception, the Eleventh Circuit rejected that proposition: "It is not true, as the state plaintiffs argue, that the 'necessary in aid of' exception is only available prior to the entry of judgment in federal court." 877 F.2d at 881 (citing cases from the Second and DC Circuits in support). The decision below reaches a contrary conclusion; the conflict with the Eleventh Circuit on this point is apparent.

The Seventh Circuit emphasized the importance of the *effect* of the state proceeding, rather than the precise stage of the federal court proceedings, when it ruled in *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996), that the "'necessary in aid of jurisdiction' exception should be construed 'to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court's jurisdiction nugatory.'" *Id.* (citing Martin H. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. Chi. L. Rev. 717, 754 (1977)). That is precisely what would happen here if the district court is prohibited from enjoining the Minnesota verdict. As the dissent clearly explained, allowing Lester to recover these repair costs would "condone[] a double-recovery by a sub-group of class members in direct contravention of the settlement agreement and encourage[]

the proliferation of similar sub-groups and similar lawsuits in other states." App. 44a. To allow the court of appeals' decision to stand, in light of that clear conflict with the purposes and intent of the Class Settlement, and in light of the conflicts with other circuit courts, would permit third parties to flaunt the authority of federal courts in cases where consistency of treatment and predictability are critically important.

3. The decision below also conflicts with the decisions of other circuits in its refusal to extend the "protect or effectuate" exception of the statute to anything other than cases in which a "rigorous application of *res judicata* principles" would lead to a conclusion that the state suit was barred. App. 28a. The court below found that because Lester was not a party to the Settlement, it could not be bound by it, and so the damages at issue (which were, according to the majority, damages to which Lester was entitled under state law) could not be enjoined.

This approach, however, improperly excludes circumstances that other circuits have recognized as being within the plain language of the Anti-Injunction Act, but which may not necessarily present traditional *res judicata* circumstances. No strict application of *res judicata* principles is called for by the statute; while the exception is "*grounded in* the well-recognized concepts of *res judicata* and collateral estoppel," *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988) (first emphasis added), the explicit objective of the exception is merely to "protect or effectuate" federal court judgments.

That is exactly how other circuits have approached the exception. In the Second Circuit's decision in *IBT*, 907 F.2d at 277, for instance, the court held (under the All Writs Act) that injunctions *may* issue against non-parties in order to prevent those non-parties from interfering with a district court's ability to *implement* – not merely sign – a consent decree. 907 F.2d at 280. That authority, *IBT* concluded, was necessary if the district court was to "protect" and to "effec-

tuate" its judgment. *Id.* at 280, 281. The Second Circuit therefore found authority to issue these injunctions under the All Writs Act, and did so using the precise language of the third exception to the Anti-Injunction Act. *IBT* explicitly holds that the binding effect of a prior judgment is *irrelevant* to a district court's authority to "protect" and "effectuate" its judgment as long as a subsequent action threatens the implementation of that judgment. *Id.* at 280, 281. There is no reason for that to be any less true under the Anti-Injunction Act than under the All Writs Act. Applied in this case, *IBT* would have allowed the district court to issue the injunction. The Ninth Circuit's decision to the contrary, based on the belief that third parties had to be bound by res judicata before a district court has authority to "protect and effectuate" its judgment, is contrary to *IBT*.

The decision below also conflicts with *In re Diet Drugs*, 282 F.3d at 220. In *Diet Drugs*, the Third Circuit applied the Anti-Injunction Act to bar third parties from bringing state litigation that would interfere with completion of a carefully-negotiated federal class settlement. While the settlement in that case was incomplete, nothing in that decision suggests (as does the decision below) that the Third Circuit believed that its jurisdiction over third parties was dependent on the still-incomplete status of the federal court settlement.

4. The decision below also conflicts with *Diet Drugs* because the latter decision holds, as did the dissent below, App. 66a-68a, that in complex class litigation, a settlement and the benefits thereof become much like a *res* over which the district court may exercise continuing control under this exception to the Act. *See* 282 F.3d at 235-36 and n.12. As this Court has long recognized, federal courts may protect their jurisdiction over a *res* under the Anti-Injunction Act. See *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 135-36 (1941); *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964).

The idea of a complex settlement as a *res* within the Court's jurisdiction – and therefore protectible even after the

entry of a "final" settlement – is one that the Ninth Circuit brushed aside in the decision below, App. 22a n. 20, but one on which at least the Second, Third, and Eleventh Circuits have relied in affirming the issuance of injunctions in order to protect complex class settlements. It should have been a sufficient basis for the district court's authority here.

Diet Drugs notes that "several ... courts have analogized complex litigation cases to actions *in rem*," 282 F.3d at 235-36 and 235 n.12 (citing cases). In *Battle*, the Eleventh Circuit noted that "it makes sense to consider this case, involving years of litigation and mountains of paperwork, as similar to a res to be administered . . . This lengthy, complicated litigation is the 'virtual equivalent of a *res*.'" 877 F.2d at 882 (citations omitted). And the Second Circuit reaches the same conclusion in *Baldwin-United*, 770 F.2d at 337 (same).

By ignoring this further basis for entry of an injunction under the "in aid of jurisdiction" prong of the Anti-Injunction Act, the decision below conflicts with prior decisions of the Second, Third, and Eleventh Circuits.

5. The cases cited above regularly find the exceptions to the Anti-Injunction Act to apply in situations nearly identical to the one presented in this case. Indeed, in *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002), this Court pointed parties in LP's situation to the very approach used by LP in this case. In *Syngenta*, the Court held that the All Writs Act does not provide jurisdiction for purposes of removal under 28 U.S.C. § 1441. In reaching that conclusion, the Court held that a party faced with a state court action that would undermine a federal court settlement could seek to enjoin that state court proceeding by returning to the federal court that had retained jurisdiction over the settlement (whether entered or not). See 537 U.S. at 34, n.*.

The course followed by LP in this case, like this Court's suggestion in *Syngenta*, and like that followed by the district courts in *Baldwin-United*, *Diet Drugs*, and *Battle*, is a course

that falls within the plain language of the exceptions to the Anti-Injunction Act. The decision below conflicts with those decisions, and this Court should grant the petition in order to resolve those conflicts and clarify the authority of the district court and the rights and options of parties facing similar situations in the future.

B. THE ISSUE PRESENTED IS OF NATIONAL IMPORTANCE.

Finally, the issue presented in this petition has national importance. The panel's decision unnecessarily complicates the process of drafting, entering into, and implementing class action settlements, and it does so at a time when district courts need more authority, not less, to craft and monitor class action settlements. If the decision below stands, parties in complex product-liability class actions – most of which include significant distribution chains – could protect their interests only by accomplishing the almost-impossible task of bringing a class of all distributors into the class action settlement. Without such a third-party class, and without the authority that the district court exercised in this case, parties will find it difficult, if not impossible, to create the kind of global settlements that are necessary to ensure the resolution of these kinds of class actions, and that are critical to the efficient operation of the federal system.

The conflict created by the decision below regarding the authority of a district court in the management of class action settlements creates uncertainty and confusion for parties and district courts that are drafting, approving, and implementing class settlements. Contrary to the opinion of the court of appeals, see App. 37a, LP certainly did believe, when it agreed to this settlement, that it had "bargained" for a release from the need to pay the very kind of damages that were represented by the jury verdict enjoined in this case. The lower court's interpretation of the Anti-Injunction Act's exceptions casts substantial doubt on the ability of parties to draft and enforce the bargains negotiated in the complex

class actions. That doubt should be alleviated if the process of class settlement is to be as efficient as possible – or even possible at all.

Finally, the recent enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (Feb. 18, 2005) (amending 28 U.S.C. § 1332(d) to extend federal jurisdiction to certain class actions alleging more than $5 million in damages), means that this issue is taking on even greater importance for the federal district courts, which are facing a substantially larger number of class actions addressing a wider scope of issues than was true before the enactment of the legislation. The uncertainty created by the decision below is magnified by this development; in combination with the conflict with other circuits generated by that decision, the importance of this issue merits this Court's attention.

CONCLUSION

For the reasons described above, the Court should grant Louisiana Pacific's petition for writ of certiorari.

RESPECTFULLY SUBMITTED this 20th day of April, 2006.

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